

**2009 DRAFTING REQUEST****Bill**Received: **09/11/2008**Received By: **btradewe**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-1103**By/Representing: **Miner**This file may be shown to any legislator: **NO**Drafter: **btradewe**May Contact: **DATCP**

Addl. Drafters:

Subject: **Agriculture - other**

Extra Copies:

Submit via email: **NO****Pre Topic:**

DOA:.....Miner, BB0078 -

**Topic:**

Purchase of agricultural conservation easements

**Instructions:**

See attached

**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>         | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /?           | btradewe<br>10/28/2008 | wjackson<br>11/12/2008 |                        |                |                        |                 |                 |
| /P1          |                        |                        | rschluet<br>11/12/2008 |                | lparisi<br>11/12/2008  |                 | S&L             |
| /1           | btradewe<br>01/09/2009 | wjackson<br>01/13/2009 | mduchek<br>01/13/2009  |                | cduerst<br>01/13/2009  |                 | S&L             |
| /2           | btradewe<br>01/19/2009 | wjackson<br>01/19/2009 | rschluet<br>01/20/2009 |                | sbasford<br>01/20/2009 |                 | S&L             |
| /3           | btradewe<br>01/30/2009 | wjackson<br>01/30/2009 | rschluet<br>01/30/2009 |                | cduerst<br>01/30/2009  |                 |                 |

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

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| /2           | btradewe<br>01/19/2009 | wjackson<br>01/19/2009 | rschluet<br>01/20/2009 |                | sbasford<br>01/20/2009 |                 |                 |

FE Sent For:

/3 WJ 1/30

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| /1           | btradewe<br>01/09/2009 | wjackson<br>01/13/2009 | mduchek<br>01/13/2009  | _____          | cduerst<br>01/13/2009 |                 |                 |

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12 wj 1/19

  
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Subject: **Agriculture - other**

Extra Copies:

Submit via email: **NO**

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| /P1          |                        | 11/12/2008             | rschluet<br>11/12/2008 | _____          | lparisi<br>11/12/2008 |                 |                 |

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|--------------|----------------|-----------------|---|----------------|------------------|-----------------|-----------------|
| /?           | btradewe       | /pl wlj 11/11   |  | pH             |                  |                 |                 |

FE Sent For:

&lt;END&gt;

## 2009 DRAFTING REQUEST

### Bill

Received: 09/11/2008

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Agricult. Trade and Cons. Prot. 224-5022

By/Representing: Jim Matson

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - other

Extra Copies:

Submit via email: YES

Requester's email: James. Matson@Wisconsin.gov

Carbon copy (CC:) to: keeley.moll@datcp.state.wi.us

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### Pre Topic:

No specific pre topic given

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### Topic:

*✓ I fixed on T2K.POL*  
Purchase of agricultural conservation easements

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### Instructions:

See attached

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### Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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|    |          |  |  |  |  |  |  |
|----|----------|--|--|--|--|--|--|
| /? | btradewe |  |  |  |  |  |  |
|----|----------|--|--|--|--|--|--|

FE Sent For:

<END>

## Tradewell, Becky

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**From:** Matson, James K - DATCP [James.Matson@Wisconsin.gov]  
**Sent:** Monday, September 15, 2008 10:21 AM  
**To:** Tradewell, Becky  
**Cc:** Pielsticker, Kathy F - DATCP; Jelinski, Dave - DATCP; Foye, Keith W - DATCP  
**Subject:** Agricultural Conservation Easements - Bill Draft  
**Attachments:** PACE - Draft 9-15-08.doc

Hi Becky -- Here is a slightly revised version of the Agricultural Conservation Easements that I sent you last week. The latest revisions are highlighted in this draft. Sorry that this continues to be a moving target, but I think we are getting pretty close. Thanks again for your help. -- Jim Matson



PACE - Draft  
9-15-08.doc (77...

*Some changes were suggested by state's bond counsel*

*07-1888(P)*



**Sections Affected Post–Drafting–Check For 07–1888/P1**

**Tuesday, September 23, 2008 2:50 pm**

**Current Wisconsin Statutes updated through 2007 Act 242**

**CITATION**

**TREATMENT**

**AFFECTED BY**

**20.115 (8) (g)**

**am. effec. 5–21–2008**

**Act 223, s. 5**

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Working Lands
- Tracking Code: BB0078
- SBO team: Agriculture, Environment and Justice
- SBO analyst: Andrew Miner *Am 9/28/08*
  - Phone: 266-1103
  - Email: andrew.miner@wisconsin.gov
- Agency acronym: DATCP
- Agency number: 115
- Priority (Low, Medium, High): High

Please convert all drafts related to the Working Lands Initiative currently submitted to LRB by DATCP to SBO drafts.

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS (PACE)

### DRAFT INCORPORATING DATCP'S SUGGESTED CHANGES TO LRB-1888/P1

1 AN ACT *to amend* 20.115 (8) (g); and *to create* 20.115 (7) (br), 20.115 (7) (i),  
2 20.866 (2) (wg) and 93.73 of the statutes; **relating to:** an agricultural conservation  
3 easement purchase program, creating bonding authority, and making  
4 appropriations.

---

#### *Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

---

*The people of the state of Wisconsin, represented in senate and assembly, do  
enact as follows:*

5 **SECTION 1.** 20.115 (7) (br) of the statutes is created to read:

6 20.115 (7) (br) *Principal repayment and interest; agricultural conservation*  
7 *easements.* A sum sufficient to reimburse s. 20.866 (1) (u) for the principal and interest  
8 costs incurred in purchasing agricultural conservation easements under s. 93.73 and to  
9 make the payments determined by the building commission under s. 13.488 (1) that are  
10 attributable to the proceeds of obligations incurred to purchase those easements.

11 **SECTION 2.** 20.115 (7) (i) of the statutes is created to read:

12 20.115 (7) (i) *Agricultural conservation easements; gifts, grants, and*  
13 *repayments.* All moneys received from gifts and grants for the purchase of agricultural

conservation easements under s. 93.73 and all moneys received by the department under s. 93.73 (13) (b) 4., to be used for the program under s. 93.73.

**SECTION 3.** 20.115 (8) (g) of the statutes is amended to read:

20.115 (8) (g) *Gifts and grants.* All moneys received from gifts and grants, except as provided in sub. (7) (i), to carry out the purposes for which made.

**SECTION 4.** 20.866 (2) (wg) of the statutes is created to read:

20.866 (2) (wg) *Agricultural conservation easements.* From the capital improvement fund, a sum sufficient for the department of agriculture, trade and consumer protection to purchase agricultural conservation easements under s. 93.73. The state may contract public debt in an amount not to exceed \$12,000,000 for this purpose.

**SECTION 5.** 93.73 of the statutes is created to read:

**93.73 Agricultural conservation easements; purchases. (1) DEFINITIONS.** In this section:

(a) "Agricultural conservation easement" means a conservation easement, as defined in s. 700.40 (1) (a), the purpose of which is to assure the availability of land for agricultural use.

(b) "Agricultural use" means any of the following:

1. Any of the following activities conducted for the purpose of producing an income or livelihood:

a. Crop or forage production.

b. Keeping livestock.

c. Beekeeping.

d. Nursery, sod, or Christmas tree production.

1 e. Floriculture.

2 f. Aquaculture.

3 g. Fur farming.

4 h. Forest management.

5 i. Enrolling land in a federal agricultural commodity payment program or a  
6 federal or state agricultural land conservation payment program.

7 2. Any other use that the department, by rule, defines as an agricultural use.

8 (c) "Cooperating entity" means a political subdivision or nonprofit conservation  
9 organization that applies for the purchase of an agricultural conservation easement under  
10 this section.

11 (d) "Nonprofit conservation organization" means a nonstock corporation,  
12 charitable trust, or other entity whose purposes include the acquisition of property for  
13 conservation or agricultural preservation purposes, and that is described in section 501 (c)  
14 (3) of the Internal Revenue Code and is exempt from federal income tax under section  
15 501 (a) of the Internal Revenue Code.

16 (e) "Fair market value" means value as determined by a professional appraisal  
17 that is approved by the department.

18 (f) "Political subdivision" means a city, village, town, or county.

19 (g) "Professional appraisal" means an appraisal conducted by an appraiser who is  
20 licensed and certified by the real estate appraisers board under ch. 458, Stats.

21 (h) "Purchase cost" means the amount paid to a landowner to acquire an  
22 agricultural conservation easement from the landowner.

1 (i) "Transaction costs" means out-of-pocket expenses incurred in connection with  
2 the acquisition, processing, recording and documentation of an agricultural conservation  
3 easement. "Transaction costs" include out-of-pocket expenses for land surveys, land  
4 descriptions, real estate appraisals, title verification, preparation of legal documents,  
5 reconciliation of conflicting property interests, documentation of existing land uses, and  
6 closing. "Transaction costs" do not include purchase costs, or costs incurred by a  
7 cooperating entity for staffing, overhead or operations.

8 (2) PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS; LEGISLATIVE  
9 FINDING. The legislature finds and determines all of the following:

10 (a) That the preservation of farmland is important for current and future  
11 agricultural production in this state, including the production of food and other products  
12 needed to sustain the life, health and welfare of the people of this state.

13 (b) That the preservation of farmland is important for the current and future state  
14 economy, and for the current and future environment of this state.

15 (c) That purchases of agricultural conservation easements, as provided in this  
16 section, serve important public purposes of statewide or regional significance.

17 (3) PROGRAM TO PURCHASE AGRICULTURAL CONSERVATION EASEMENTS. The  
18 department shall administer a program under which the department, together with  
19 cooperating entities, purchases agricultural conservation easements under this section  
20 from willing landowners.

21 (4) SHARE OF PURCHASE AMOUNT. The department may pay, as its share of the  
22 cost to purchase an agricultural conservation easement under this section, an amount that  
23 does not exceed the sum of the following:

1 (a) Fifty percent of the fair market value of the easement.

2 (b) Reasonable transaction costs related to the easement purchase.

3 (5) SOLICITING APPLICATIONS FOR EASEMENT PURCHASES. The department, in  
4 consultation with the advisory committee under sub. (18), shall at least annually solicit  
5 applications for the purchase of agricultural conservation easements under this section.  
6 The department shall issue each solicitation in writing, and shall publish a notice  
7 announcing the solicitation. In soliciting applications, the department may specify the  
8 total amount of funds available, application deadlines, application requirements and  
9 procedures, preliminary criteria for evaluating applications, and other relevant  
10 information.

11 (6) EASEMENT PURCHASE APPLICATIONS. A cooperating entity may apply for the  
12 purchase of an agricultural conservation easement under this section. An application  
13 shall comply with requirements contained in the department's solicitation under sub. (5)  
14 and shall include all of the following:

15 (a) The identity of the cooperating entity, including information verifying that the  
16 cooperating entity is a political subdivision or nonprofit conservation organization.

17 (b) A description of the land that will be subject to the proposed agricultural  
18 conservation easement, including location, acreage, and current use.

19 (c) The purpose of and rationale for the proposed agricultural conservation  
20 easement.

21 (d) The name and address of each owner of land that will be subject to the  
22 proposed agricultural conservation easement.

1 (e) Evidence that all of the owners under par. (d) are willing to convey the  
2 proposed agricultural conservation easement.

3 ~~(f) The cooperating entity's agreement to incur the full purchase cost and~~  
4 ~~transaction costs related to the purchase of the proposed agricultural conservation~~  
5 ~~easement, subject to subsequent reimbursement under sub. (14) of the department's~~  
6 agreed share of those costs. This paragraph does not prevent a cooperating entity from  
7 obtaining funding, for its share of the costs, from other sources.

8 ~~(g) Information needed to evaluate compliance with the department's solicitation~~  
9 under sub. (5) and the purchase criteria in sub. (7).

10 (7) EASEMENT PURCHASE CRITERIA. The department may not approve an  
11 application under sub. (5) unless the department determines that purchase of the proposed  
12 agricultural conservation easement will serve a public purpose. In making this  
13 determination, the department shall consider all of the following criteria:

14 (a) The value of the proposed easement in preserving or enhancing agricultural  
15 production capacity in this state.

16 (b) The importance of the proposed easement in protecting or enhancing the  
17 waters of the state or in protecting or enhancing other public assets.

18 (c) The extent to which the proposed easement would conserve important or  
19 unique agricultural resources, such as soil that the United States department of agriculture  
20 has classified in soil capability classes I to IV.

21 (d) The extent to which the proposed easement would be consistent with local  
22 land use plans and zoning ordinances, including any certified farmland preservation plans  
23 and zoning ordinances under ch. 91.

**Deleted:** (f) A preliminary estimate of the fair market value of the proposed agricultural conservation easement.¶  
(g) Preliminary estimates of the following costs to acquire the proposed agricultural conservation easement:¶  
1. Purchase cost.¶  
2. Transaction costs.¶

**Deleted:** h

**Deleted:** all of

**Deleted:** under par. (g).

**Deleted:** i



1 (e) The extent to which the proposed easement would enhance an agricultural  
2 enterprise area designated under subch. VI of ch. 91.

3 (f) The proximity of the land subject to the proposed easement to other land that  
4 is protected for agricultural or conservation use, and the extent to which the proposed  
5 easement would enhance that protection.

6 (g) The availability, practicality and effectiveness of other methods to preserve  
7 the land that would be subject to the proposed easement.

8 (h) The likely amount and share of purchase and transaction costs that the  
9 department would pay for the proposed easement.

10 (i) The likely cost-effectiveness of the proposed easement in preserving land for  
11 agricultural use.

12 (k) The likelihood that land subject to the proposed easement would be  
13 converted to nonagricultural use but for the proposed easement.

14 (L) The apparent willingness of each landowner to convey the proposed  
15 easement.

16 **(8) APPROVAL OF EASEMENT PURCHASE APPLICATIONS.** The department may  
17 approve an application under sub. (6) after evaluating the application under sub. (7) and  
18 consulting with the advisory council under sub. (18). The department shall issue its  
19 approval in writing. The approval shall include the name of the cooperating entity, the  
20 amount of easement purchase costs approved for payment by the department, the location  
21 and acreage of the land that will be subject to the proposed easement, the rationale for  
22 approving the purchase application, and any conditions that apply to the approval. An

**Deleted:** (m) The value of the  
proposed easement as a state property  
asset.

1 approval is contingent on the signing of a contract between the cooperating entity and the  
2 department under sub. (10), and on other conditions specified in the approval.

3 (9) FOLLOW-UP INFORMATION RELATED TO APPROVED APPLICATION. A  
4 cooperating entity that receives an approval under sub. (8) shall submit all of the  
5 following to the department:

6 (a) A copy of the proposed instrument for conveying the agricultural  
7 conservation easement.

8 (b) A professional appraisal of the fair market value of the proposed agricultural  
9 conservation easement.

10 (c) The purchase cost of the proposed agricultural conservation easement.

11 (d) An itemized statement of the transaction costs that the cooperating entity will  
12 incur in connection with the purchase of the proposed agricultural conservation easement.

13 (e) The record of a complete search of title records that verifies ownership of the  
14 land subject to the proposed agricultural conservation easement and identifies any  
15 potentially conflicting property interests, including any liens, mortgages, easements, or  
16 reservations of mineral rights.

17 (f) Documentation showing to the satisfaction of the department that any material  
18 title defects will be eliminated and any materially conflicting property interests will be  
19 subordinated to the proposed agricultural conservation easement or eliminated.

20 (10) CONTRACT WITH COOPERATING ENTITY. (a) After a cooperating entity  
21 complies with sub. (9), the department and the cooperating entity may enter into a written  
22 grant contract that specifies the terms and conditions of the department's participation in  
23 the purchase of the proposed agricultural conservation easement.

1 (b) A contract under par. (a) shall provide that the cooperating entity will pay the  
2 full purchase cost and transaction costs related to the purchase of the proposed  
3 agricultural conservation easement, subject to subsequent reimbursement under sub. (14)  
4 of the department's agreed share of the costs. This paragraph does not prevent a  
5 cooperating entity from obtaining funding, for its share of the costs, from other sources.

6 (11) EASEMENT PURCHASE. After a cooperating entity has entered into a contract  
7 with the department under sub. (10), the cooperating entity may act according to the  
8 contract to purchase an agricultural conservation easement on behalf of the cooperating  
9 entity and the department.

10 (12) TERMS OF EASEMENT. An agricultural conservation easement under this  
11 section shall do all of the following:

12 (a) Prohibit development of land subject to the easement for use other than  
13 agricultural use.

14 (b) Continue in perpetuity, except as provided in sub. (15) (b).

15 (c) Be binding on subsequent owners of the land that is subject to the easement.

16 (d) Provide that the cooperating entity, and the department on behalf of this state,  
17 are both holders of the agricultural conservation easement.

18 (e) Prohibit any holder of the agricultural conservation easement from  
19 transferring or relinquishing the holder's interest without permission from this state.

20 (f) Comply with any other conditions specified in the contract under sub. (10).

21 (13) RECORDING OF EASEMENT. A cooperating entity that purchases an agricultural  
22 conservation easement under this section shall do all of the following, immediately after  
23 the instrument conveying the easement is signed:

1 (a) Record with the register of deeds, in the county in which the land subject to  
2 the easement is located, the signed instrument conveying the easement.

3 (b) Provide copies of all of the following to the department:

- 4 1. A copy of the signed instrument conveying the easement.  
5 2. A copy of the official record, from the register of deeds, documenting that the  
6 signed instrument conveying the easement has been recorded under par. (a).

7 **(14) REIMBURSEMENT PAYMENT.** The department shall pay, on a reimbursement  
8 basis to a cooperating entity that purchases an agricultural conservation easement under  
9 sub. (11), the department's agreed portion of the purchase cost and transaction costs  
10 related to the purchase of the agricultural conservation easement. The department shall  
11 make its payment after the cooperating entity does all of the following:

Deleted: cost to purchase the

12 (a) Complies with sub. (13).

13 (b) Submits documentation showing that any material title defects have been  
14 eliminated and any materially conflicting property interests have been eliminated or  
15 subordinated to the agricultural conservation easement, as required by the contract under  
16 sub. (10).

17 (c) Submits proof of the purchase and transaction costs that the cooperating entity  
18 has paid, pursuant to the contract under sub. (10).

19 **(15) TRANSFER OR RELINQUISHMENT OF EASEMENT.** (a) The department, on behalf  
20 of this state, may authorize the holder of an agricultural conservation easement purchased  
21 under this section to transfer or relinquish the holder's interest in the agricultural  
22 conservation easement. The transfer or relinquishment of another holder's interest does  
23 not affect this department's interest in the agricultural conservation easement.

1 (b) The department, on behalf of this state, may relinquish an agricultural  
2 conservation easement purchased under this section if all of the following apply:

3 1. The agricultural conservation easement was purchased at least 60 years before  
4 the date on which it is relinquished.

5 2. The department determines that the land subject to the agricultural  
6 conservation easement is no longer suitable for any agricultural use and that the state no  
7 longer has an interest in holding the agricultural conservation easement.

8 3. All other holders of the agricultural conservation easement agree to relinquish  
9 the easement.

10 4. One or more owners of the land subject to the agricultural conservation  
11 easement pay to the department an amount equal to the product obtained by multiplying  
12 all of the following by 4.0:

13 a. The fair market value of the agricultural conservation easement on the date on  
14 which it is relinquished.

15 b. The fraction of the agricultural conservation easement purchase and  
16 transaction costs that were paid by the department under this section.

17 (16) ENFORCEMENT OF EASEMENT. (a) Any holder of an agricultural  
18 conservation easement purchased under this section may enforce and defend the  
19 agricultural conservation easement.

20 (b) The department may, on behalf of this state, enforce and defend an  
21 agricultural conservation easement purchased under this section.

22 (17) RECORD OF EASEMENTS. The department shall maintain a record of all  
23 agricultural conservation easements purchased under this section.

- 1        **(18) ADVISORY COUNCIL.** The department shall appoint an advisory council to
- 2        advise the department on the administration of this section.

**(END)**

IN 10/28

WJG  
mnr*This is a Not Budget draft & will show that heading*

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON

Note

Do Not Gen

- 1 **AN ACT** to amend 20.115 (8) (g); and to create 20.115 (7) (br), 20.115 (7) (i),  
 2 20.866 (2) (wg) and 93.73 of the statutes; relating to: an agricultural  
 3 conservation easement grant program, granting bonding authority, and  
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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

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 6 20.115 (7) (br) *Principal repayment and interest; agricultural conservation*  
 7 *easements.* A sum sufficient to reimburse s. 20.866 (1) (u) for the principal and  
 8 interest costs incurred in financing purchasing agricultural conservation easement grants  
 9 under s. 93.73 and to make the payments determined by the building commission  
 10 under s. 13.488 (1) that are attributable to the proceeds of obligations incurred to  
 11 finance those grants. Inset 1-11

NOTE: BUD

SECTION 2. 20.115 (7) (i) of the statutes is created to read:

20.115 (7) (i) *Agricultural conservation easements; gifts, grants, and repayments.* All moneys received from gifts and grants for the <sup>purchase of</sup> agricultural conservation easement grant program under s. 93.73 and all moneys received by the department under s. 93.73 (10) (b), to be used for the program under s. 93.73.

SECTION 3. 20.115 (8) (g) of the statutes is amended to read:

20.115 (8) (g) *Gifts and grants.* All moneys received from gifts and grants, except as provided in sub. (7) (i), to carry out the purposes for which made.

SECTION 4. 20.866 (2) (wg) of the statutes is created to read:

20.866 (2) (wg) *Agricultural conservation easements.* From the <sup>capital</sup> ~~capitol~~ improvement fund, a sum sufficient for the department of agriculture, trade and consumer protection to <sup>purchase</sup> provide grants for agricultural conservation easements under s. 93.73. The state may contract public debt in an amount not to exceed \$12,000,000 for this purpose.

SECTION 5. 93.73 of the statutes is created to read:

<sup>purchase of</sup> **93.73 Agricultural conservation easement grants.** (1) DEFINITIONS. In this section:

(a) "Agricultural conservation easement" means a conservation easement, as defined in s. 700.40 (1) (a), the purpose of which is to assure the availability of land for agricultural use.

(b) <sup>nonstock</sup> ~~"Farmland trust"~~ means a nonprofit corporation, charitable trust, or other nonprofit entity that is organized to acquire property interests in land for the purpose of preserving the land for agricultural use, that is described in section 501

(c) (3) of the Internal Revenue Code, and that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.



1 (c) "Political subdivision" means a city, village, town, or county.

2 (d) "Purchase cost" means the amount paid to a landowner to acquire an  
3 agricultural conservation easement from the landowner.

4 (e) "Transaction costs" means costs associated with the acquisition, processing,  
5 and recording of an agricultural conservation easement, including out-of-pocket  
6 expenses for land surveys, real estate appraisals, title verification, reconciliation of  
7 conflicting property interests, and closing. "Transaction costs" does not include

8 staffing costs, overhead costs, or operating costs incurred by a recipient of a grant  
9 under this section.

10 (2) PROGRAM. (a) The department shall administer a grant program under  
11 which it reimburses political subdivisions and farmland trusts for the costs of  
12 acquiring agricultural conservation easements from willing landowners. A grant  
13 may not exceed 50 percent of the reasonable purchase cost plus 50 percent of the  
14 reasonable transaction costs paid by the recipient of the grant to acquire the  
15 agricultural conservation easement.

16 (b) The department shall solicit applications for grants under this section at  
17 least annually. In soliciting applications, the department may specify the total  
18 amount of funds available, application deadlines, application requirements and  
19 procedures, preliminary criteria for evaluating applications, and other relevant  
20 information.

21 (3) APPLICATION. A political subdivision or farmland trust may apply for a grant  
22 under this section for reimbursement of a portion of the costs of acquiring an  
23 agricultural conservation easement. An applicant shall submit an application that

24 complies with requirements contained in the department's solicitation under sub. (2)

25 (b) and that contains all of the following:

(Not)

Identifying information for cooperating entity

1 (a) The identity of the applicant, including information showing that the  
2 applicant is a political subdivision or farmland trust *nonprofit conservation organization*

3 (b) A description of the farmland *Insert 4-3* proposed to be covered by the agricultural  
4 conservation easement, including location, acreage, and current use. *Insert 4-5*

5 (c) The name and address of each owner of farmland *Insert 4-5* proposed to be covered by  
6 the agricultural conservation easement.

7 (d) Evidence that all of the owners under par. (c) *convey* are willing to grant the  
8 proposed agricultural conservation easement.

9 (e) The total estimated cost to acquire the proposed agricultural conservation  
10 easement, including separate estimates of the purchase cost and the transaction  
11 costs.

*Insert 4-11*  
12 (f) The purpose of and rationale for the proposed agricultural conservation  
13 easement.

14 (g) Information needed to evaluate how the proposed agricultural conservation  
15 easement complies *compliance* with the criteria in sub. (4) and in the department's solicitation  
16 under sub. (2) (b).

17 (4) GRANT CRITERIA. *Application evaluation* *Insert 4-17* *making this determination* In evaluating each application under sub. (3), the  
18 department shall consider all of the following criteria:

*Insert 4-18*  
19 (a) How the application complies with this section and with any criteria in the  
20 department's solicitation under sub. (2) (b).

21 (b) The extent to which the proposed agricultural conservation easement would  
22 preserve farmland that has statewide or regional significance.

23 (c) *b* The importance of the proposed agricultural conservation easement in  
24 protecting or enhancing the waters of the state or in protecting or enhancing other  
25 critical public assets.

*important or unique*  
C  
1 (d) The extent to which the proposed agricultural conservation easement would  
2 conserve soil and other critical agricultural resources. *Insert 5-2* *would be consistent*

*extent to which*  
3 (e) The consistency of the proposed agricultural conservation easement with  
4 local land use plans and zoning ordinances, including *any certified* farmland preservation plans  
5 and exclusive agricultural zoning ordinances. *under ch 91*

*Insert 5-5*  
6 (f) The availability and practicality of other methods to preserve the farmland  
7 *Insert 5-6* *and effectiveness* *proposed to be covered by the agricultural conservation easement.*

8 (g) The percentage of the purchase cost and of the transaction costs proposed  
9 to be contributed by the applicant.

*Insert 5-10*  
10 (h) The likely amount of the grant if the application were approved.

*Insert 5-11*  
11 (i) The proximity of the farmland proposed to be covered by the agricultural  
12 conservation easement to *other* land that is publicly protected, and the extent to which the  
13 proposed agricultural conservation easement would enhance *that* protection of the land  
14 that is publicly protected.

*proposed*  
15 (j) The likely cost-effectiveness of the agricultural conservation easement in  
16 preserving the farmland *proposed* to be covered by the agricultural conservation  
17 easement and other farmland for agricultural use.

*Insert 5-18*  
18 (k) The likelihood that the land *proposed* to be covered by the agricultural  
19 conservation easement would be *Insert 5-19* developed for uses that are not agricultural if the  
20 land is not protected by *the proposed* an agricultural conservation easement.

*convey proposed*  
21 (l) The apparent willingness of each landowner to grant the agricultural  
22 conservation easement.

23 (m) Other criteria specified by the department in the solicitation under sub. (2)

24 (b) or by rule.

1 (5) APPROVAL OF APPLICATIONS. The department <sup>may approve an</sup> shall select applications under  
2 sub. (3) <sup>Insert 6-2-A</sup> for approval based on the evaluation <sup>Insert 6-2-B</sup> under sub. (4). The department shall  
3 provide its approval of an application in writing. In an approval, the department  
4 shall specify the <sup>Insert 6-4</sup> proposed amount of the grant, the recipient of the grant, the location  
5 and acreage of the <sup>Insert 6-5</sup> farmland <sup>only</sup> for which it will provide a grant, the rationale for  
6 approving the application, and the <sup>Insert 6-6</sup> conditions for making the grant. The approval  
7 of an application is contingent on the <sup>signing</sup> execution of a grant contract under sub. (6) (b)  
8 and on other conditions specified in the approval. <sup>Insert 6-9</sup>

9 (6) GRANT CONTRACT. (a) Following the receipt of an approval under sub. (5) <sup>Insert 6-9-B</sup>  
10 a recipient shall submit all of the following to the department:

11 (a) 1. A copy of the proposed instrument for conveying the agricultural  
12 conservation easement.

13 (b) 2. An independent, professional appraisal of the purchase value of the proposed  
14 agricultural conservation easement.

15 (c) 3. A statement of the proposed purchase cost of the agricultural conservation  
16 easement. <sup>itemized statement</sup>

17 (d) 4. An <sup>Insert 6-17</sup> estimate of the transaction costs for acquiring the proposed agricultural  
18 conservation easement.

19 (e) 5. The record of a complete search of title records that verifies ownership of the  
20 <sup>Insert 6-20</sup> farmland proposed to be covered by the agricultural conservation easement and  
21 identifies any potentially conflicting property interests, including any liens,  
22 mortgages, easements, or reservations of mineral rights.

23 (f) 6. Documentation showing to the satisfaction of the department that any  
24 material title defects will be eliminated and any materially conflicting property

interests will be subordinated to the <sup>proposed</sup> agricultural conservation easement or eliminated.

<sup>Insert 7-63</sup> (b) After <sup>a cooperating entity</sup> the recipient complies with <sup>sub (6)</sup> par. (a) and the department determines that the proposed instrument of conveyance complies with sub. (7), the department and the <sup>cooperating entity</sup> recipient may enter into a <sup>written</sup> grant contract that specifies the terms and conditions of the <sup>Insert 7-6</sup> grant.

<sup>CS purchase</sup> (7) **TERMS OF EASEMENT.** (a) In order to receive a grant under this section, a recipient that has entered into a grant contract under sub. (6) (b) shall obtain an agricultural conservation easement <sup>that</sup> does all of the following:

(a) 1. Prohibits the <sup>Insert 7-10</sup> covered farmland from being developed by any person, including the holders, <sup>a</sup> for <sup>is an</sup> uses that are not <sup>use</sup> agricultural.

(b) 2. Continues in perpetuity, except as provided in sub. (10) (b).

(c) 3. Provides that the <sup>cooperating entity</sup> grant recipient and <sup>the department on behalf of</sup> this state are both holders of the agricultural conservation easement.

(d) 4. Prohibits any holder of the agricultural conservation easement <sup>other than the department</sup> from transferring or relinquishing the holder's interest without permission from <sup>the department</sup> this state.

(e) 5. Complies with any other conditions specified in the <sup>under sub (6m)</sup> grant contract.

(b) The department may not make a grant under this section for an agricultural conservation easement that requires the landowner to permit public access to the farmland covered by the agricultural conservation easement.

(8) **RECORDING OF EASEMENT.** <sup>cooperating entity</sup> A recipient that <sup>purchases</sup> has obtained an agricultural conservation easement under sub. (7) shall <sup>promptly</sup> record the agricultural conservation easement with the register of deeds of the county in which the <sup>subject to</sup> farmland covered by

1 the agricultural conservation easement is located and shall provide a copy of the  
2 <sup>recorded</sup> instrument conveying the agricultural conservation easement to the department. <sup>Insert 8-2</sup> <sup>move</sup>

3 (9) GRANT PAYMENT. (a) The department shall <sup>Insert 8-3</sup> pay a grant under this section  
4 to a recipient after the recipient does all of the following:

5 (a) <sup>1</sup> (1) Complies with sub. (8).

6 (b) <sup>2</sup> (2) Submits documentation showing that any material title defects have been  
7 eliminated and any materially conflicting property interests have been eliminated  
8 or subordinated to the agricultural conservation easement, as required by the grant  
9 contract under sub. (6) <sup>m</sup> (b) <sup>e</sup>

10 (c) <sup>3</sup> (3) Submits proof of the amount of the purchase <sup>cost</sup> and transaction costs that the  
11 recipient <sup>cooperating entity</sup> has paid <sup>consistent with the contract under sub. (6m)</sup>

12 (b) The department may not pay a grant under this section that exceeds the  
13 total of the following:

14 1. Fifty percent of the proposed purchase cost under sub. (6) (a) 3. or 50 percent  
15 of the actual purchase cost, whichever is less.

16 2. Fifty percent of the estimated transaction costs under sub. (6) (a) 4. or 50  
17 percent of the actual transaction costs, whichever is less.

18 (10) TRANSFER OR RELINQUISHMENT OF EASEMENT. (a) The department, on behalf  
19 of this state, may <sup>authorize another</sup> give permission to the holder of an agricultural conservation  
20 easement <sup>purchased</sup> for which a grant is made under this section to transfer or relinquish the  
21 holder's interest in the agricultural conservation easement. The transfer or  
22 relinquishment of another holder's interest does not affect <sup>the department</sup> this state's interest in the  
23 agricultural conservation easement.

(b) The department, on behalf of this state, may relinquish an agricultural conservation easement <sup>purchased</sup> for which a grant is made under this section <sup>only</sup> if all of the following apply:

1. The agricultural conservation easement was <sup>purchased</sup> ~~acquired~~ at least ~~30~~ <sup>60</sup> years before the date on which it is relinquished.

<sup>Insert 9-5</sup> 2. The department, acting on behalf of the state of Wisconsin, and all other holders agree to relinquish the agricultural conservation easement.

<sup>3/40</sup> 3. One or more owners of the land <sup>subject to</sup> covered by the agricultural conservation easement pay to the department an amount equal to the product obtained by multiplying all of the following by <sup>4/8</sup> ~~1.5~~:

a. The fair <sup>market</sup> value of the agricultural conservation easement on the date on which it is relinquished, as determined by an independent, professional appraisal;

b. The fraction of the purchase cost plus the transaction costs of acquiring the agricultural conservation easement that was reimbursed by the grant under this section.

<sup>Insert 9-15</sup> (11) ENFORCEMENT OF EASEMENT. <sup>Not</sup> Any holder of an agricultural conservation easement <sup>purchased</sup> for which a grant is made under this section may enforce and defend the agricultural conservation easement. The department may enforce and defend an agricultural conservation easement for which a grant is made under this section on behalf of this state.

(12) RECORD OF EASEMENTS. The department shall maintain a record of all agricultural conservation easements <sup>purchased</sup> for which grants are made under this section.

(END)


<sup>Insert 9-22</sup>

<sup>Note</sup>

**2009-2010 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0202/P1ins  
RCT:.....

**Insert 1-11**

 easements, and to make payments under an agreement or ancillary arrangement entered into under s. 18.06 (8) (a)

**Insert 2-5**

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

**SECTION ~~2~~** 20.115 (8) (g) of the statutes is amended to read:

20.115 (8) (g) *Gifts and grants*. Except as provided in par. (ge) and sub. (7) (i),

all moneys received from gifts and grants to carry out the purposes for which made.

**History:** 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109; 2003 a. 33, 38, 133, 326, 327; 2005 a. 25; 2007 a. 20, 125, 223.

**SECTION ~~2~~** 20.866 (1) (u) of the statutes is amended to read:

20.866 (1) (u) *Principal repayment and interest*. A sum sufficient from moneys appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b), (br) (f), and (s), 20.190 (1) (c), (d), (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c) and (e), 20.255 (1) (d), 20.285 (1) (d), (db), (im), (in), (je), (jq), (kd), (km), and (ko) and (5) (i), 20.320 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au), (bq), (br), (ca), (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), (ar), and (au), 20.410 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1) (d), 20.485 (1) (f) and (go), (3) (t) and (4) (qm), 20.505 (4) (es), (et), (ha), and (hb) and (5) (c), (g), (kc), and (kd), 20.855 (8) (a), and 20.867 (1) (a) and (b) and (3) (a), (b), (bm), (bn), (bp), (bq), (br), (bu), (bv), (g), (h), (i), and (q) for the payment of principal, interest, premium due, if any, and payment due, if any, under an agreement or



1 ancillary arrangement entered into under s. 18.06 (8) (a) relating to any public debt  
2 contracted under subchs. I and IV of ch. 18.

**History:** 1971 c. 42; 1971 c. 100 s. 23; 1971 c. 125, 211, 215, 236, 307, 330, 336; 1973 c. 90 ss. 148 to 149m, 555m (2); 1973 c. 333; 1975 c. 26, 39, 40, 41, 200, 224, 422; 1977 c. 4, 6; 1977 c. 29 ss. 385 to 387, 1650m (4), 1656 (43); 1977 c. 418; 1979 c. 4; 1979 c. 34 ss. 675a to 677v, 2102 (6) (a), (39) (a), (52) (a); 1979 c. 107, 221; 1981 c. 1 ss. 17, 18, 47; 1981 c. 20, 108, 317, 336; 1983 a. 27; 1983 a. 36 s. 96 (4); 1983 a. 97, 192, 195, 212; 1983 a. 410 s. 2202 (2); 1985 a. 6; 1985 a. 8 ss. 4, 12; 1985 a. 29 ss. 589m to 598, 3202 (23) (c), (26) (a), (53) (a); 1985 a. 77, 120, 332; 1987 a. 27, 295, 298, 399, 403, 409; 1989 a. 31, 46, 107, 122, 219, 336, 359, 366; 1991 a. 39, 51, 269, 309, 324; 1993 a. 2, 16, 98, 115, 213, 343, 377, 413, 437, 453, 485; 1995 a. 27 ss. 1159 to 1168s, 9126 (19), 9145 (1); 1995 a. 40, 57, 60, 113; 1995 a. 216, s. 30m and 9127; 1995 a. 227, 246, 372, 388, 416, 452; 1997 a. 27, 35, 61, 164, 237, 252; 1999 a. 4, 9, 146; 1999 a. 150 s. 672; 1999 a. 184; 2001 a. 12, 16, 103, 109; 2003 a. 33, 64, 91, 129; 2005 a. 1, 22, 25, 102, 300; 2007 a. 5; 2007 a. 20 ss. 582 to 597s, 9121 (6) (a); 2007 a. 226.

3 **Insert 2-16**

4 **Not**

(1) LEGISLATIVE FINDINGS. The legislature finds all of the following:

5 (a) That the preservation of farmland is important for current and future  
6 agricultural production in this state, including the production of food and other  
7 products needed to sustain the life, health, and welfare of the people of this state.

8 (b) That the preservation of farmland is important for the current and future  
9 state economy and for the current and future environment of this state.

10 (c) That purchases of agricultural conservation easements, as provided in this  
11 section, serve important public purposes of statewide significance.

12 **Insert 2-20**

13 (b) "Agricultural use" means any of the following:

14 1. Any of the following activities conducted for the purpose of producing an  
15 income or livelihood:

16 a. Crop or forage production.

17 b. Keeping livestock.

18 c. Beekeeping.

19 d. Nursery, sod, or Christmas tree production.

20 e. Floriculture.

21 f. Aquaculture.

22 g. Fur farming.

23 h. Forest management.

ment of  
1 i. Enrolling land in a federal agricultural commodity payment program or a  
2 federal or state agricultural land conservation payment program.

3 2. Any other use that the department, by rule, identifies as an agricultural use.

4 (c) "Cooperating entity" means a political subdivision or nonprofit conservation  
5 organization.

6 (d) "Fair market value" means value as determined by a professional appraisal  
7 that is approved by the department.

8 **Insert 2-21**

9 (Not) Nonprofit conservation organization

10 **Insert 2-23**

11 (Not) whose purposes include the acquisition of property for conservation or  
12 agricultural preservation purposes and

13 **Insert 3-1**

14 (g) "Professional appraisal" means an appraisal conducted by a certified  
15 general appraiser, as defined in s. 458.01 (8).

\*\*\*\*NOTE: Chapter 458 refers to licensed appraisers and certified appraisers as two different groups (although certified appraisers appear to be automatically licensed as well). I think that certification is the important qualification.

16 **Insert 3-4**

17 (Not) out-of-pocket expenses incurred in connection

18 **Insert 3-6**

19 (Not) preparation of legal documents,

20 **Insert 3-7**

21 (Not) documentation of existing land uses,

22 **Insert 3-8**

23 (Not) costs incurred by a cooperating entity for

**Insert 3-11**

**Not** , together with cooperating entities, purchases

**Insert 3-12**

**Not** The department may pay as its share of the cost to purchase an agricultural conservation easement under this section, an amount that does not exceed the sum of the following:

1. Fifty percent of the fair market value of the agricultural conservation easement.

2. The reasonable transaction costs related to the purchase of the agricultural conservation easement.

**Insert 3-16**

**Not** , after consultation with the council under sub. (13),

**Insert 3-17**

**Not** The department shall issue each solicitation in writing and shall publish a notice announcing the solicitation.

**Insert 3-21**

**Not** to participate in the program under this section by submitting

**Insert 4-3 and Insert 4-5**

**Not** that would be subject to the

**Insert 4-11**

(e) The cooperating entity's agreement to pay the full purchase cost and the transaction costs related to the purchase of the proposed agricultural conservation easement, subject to ~~reimbursement~~ <sup>reimbursement</sup> under sub. (9) of the department's agreed upon share of the costs.

**STET**

1           **Insert 4-17**

2           ~~Not~~ The department may not approve an application under sub. (3) unless the  
3           department determines that purchase of the proposed agricultural conservation  
4           easement will serve a public purpose.

5           **Insert 4-18**

6           (a) The value of the proposed agricultural conservation easement in preserving  
7           or enhancing agricultural production capacity in this state.

8           **Insert 5-2**

9           ~~Not~~, such as soil that the federal department of agricultural has classified in soil  
10          capability classes I to IV

11          **Insert 5-5**

12          (e) The extent to which the proposed agricultural conservation easement would  
13          enhance an agricultural enterprise area designated under s. 91.84.

\*\*\*\*NOTE: This paragraph depends on combining the farmland preservation  
(09-0203) draft with this one. If the drafts are not combined, this paragraph must be  
deleted.

14          **Insert 5-6**

15          ~~Not~~ that would be subject to the

16          **Insert 5-10**

17          ~~Not~~ of the purchase cost and transaction costs that the department would pay for  
18          the proposed agricultural conservation easement and the percentage of the total  
19          costs that payment would represent

20          **Insert 5-11**

21          ~~Not~~ that would be subject to the

22          **Insert 5-12**

23          ~~Not~~ for agricultural use or conservation use

1 **Insert 5-18**

2 (No ff) that would be subject to the

3 **Insert 5-19**

4 (No ff) converted to nonagricultural use

5 **Insert 6-2-A**

6 (No ff) after evaluating the application

7 **Insert 6-2-B**

8 (No ff) and consulting with the council under sub. (13) ✓

9 **Insert 6-4**

10 (No ff) name of the cooperating entity, the amount of purchase costs approved for  
11 payment by the department

12 **Insert 6-5**

13 (No ff) that would be subject to the proposed agricultural conservation easement

14 **Insert 6-6**

15 (No ff) that apply to the approval

16 **Insert 6-8**

\*\*\*\*NOTE: Should the approval say anything about the amount of transaction costs  
that the department will reimburse?

17 **Insert 6-9**

18 (No ff) INFORMATION RELATED TO APPROVED APPLICATION. A cooperating entity that  
19 receives

20 **Insert 6-17**

21 (No ff) that the cooperating entity will incur in connection with the purchase of

22 **Insert 6-20**

23 (No ff) that would be subject to the

**Insert 7-3**

(6m) CONTRACT WITH COOPERATING ENTITY.

**Insert 7-6**

(Not) department's participation in the purchase of the proposed agricultural conservation easement and that provides that the cooperating entity will pay the full purchase cost and the transaction costs related to the purchase of the proposed agricultural conservation easement, subject to reimbursement under sub. (9) of the department's agreed upon share of the costs

**Insert 7-7**

(Not) After a cooperating entity has entered into a contract under sub. (6m), the cooperating entity may, in accordance with the contract, purchase the agricultural conservation easement on behalf of the cooperating entity and the department if the

**Insert 7-10**

(Not) that is subject to the agricultural conservation easement

**Insert 8-2**

(Not) , certified by the register of deeds under s. 59.43 (1) (i)

**Insert 8-3**

(Not) reimburse a cooperating entity for the department's agreed upon portion of the purchase cost and transaction costs related to the purchase of an agricultural conservation easement to a cooperating entity after the cooperating entity

**Insert 9-5**

2. The department determines that the land subject to the agricultural conservation easement is no longer suitable for any agricultural use and that the state no longer has an interest in holding the agricultural conservation easement.

1 **Insert 9-13**

2 **NoFF** related to the purchase of

3 **Insert 9-14**

4 **NoFF** paid by the department

5 **Insert 9-15**

\*\*\*\*NOTE: As I understand this calculation, if an easement was worth \$ 50,000 when relinquished and DATCP had paid one half of the costs, the payment would be: 4 times \$50,000 times 0.5 = \$100,000. The actual amount paid for the easement would be irrelevant. Please let me know if that is not what was intended.

\*  
\*

6 **Insert 9-22**

7 **(13) COUNCIL.** The department shall appoint a council under s. 15.04 (1) (c) to  
8 advise the department on the administration of this section.

## Wj

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0202/P1dn  
RCT:wlj:rs

November 12, 2008

Andrew Miner:

This is a preliminary version of the DATCP proposal providing for a program to purchase agricultural conservation easements. Please be aware that I have included some notes in the draft itself.

As proposed by DATCP, this draft requires DATCP, in reviewing applications, to consider the extent to which a proposed easement would conserve "important or unique agricultural resources," including soil that the federal Department of Agriculture has classified in soil capability classes I to IV. Here are descriptions of those soil classes from the Natural Resources Conservation Service Internet site: Class I contains soils having few limitations for cultivation; Class II contains soils having some limitations for cultivation; Class III contains soils having severe limitations for cultivation; Class IV contains soils having very severe limitations for cultivation.

The proposed language included a requirement that the easement be "binding on subsequent owners of the land." I think that is superfluous given the nature of an easement, at least one that continues in perpetuity as the draft requires.

Section 700.40, the Uniform Conservation Easement Act, specifies that no right in favor of a holder of a conservation easement arises "prior to its acceptance by that holder and recordation of that acceptance." See s. 700.40 (2) (b). I am uncertain whether this draft should specifically provide for acceptance by DATCP and the recording of that acceptance.

Please contact me with any questions and redraft instructions.

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**Tradewell, Becky**

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**From:** Steinmetz, Jana D - DOA [Jana.Steinmetz@Wisconsin.gov]  
**Sent:** Tuesday, January 06, 2009 4:36 PM  
**To:** Tradewell, Becky  
**Cc:** Miner, Andrew - DOA; Walker, William D - DATCP  
**Subject:** FW: Working Lands Initiative -- Legislative Drafts  
**Attachments:** Comments on LRB 09-0203P1 (draft 12-29-08).DOC; Pace - Suggested Changes to LRB Draft (12-29-08).doc

Becky,

Here are comments from DATCP on working lands. Let us know if you have any questions or concerns.

Thanks,  
Jana

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**From:** Matson, James K - DATCP  
**Sent:** Monday, December 29, 2008 1:27 PM  
**To:** Steinmetz, Jana D - DOA; Miner, Andrew - DOA  
**Cc:** Romanski, Randy - DATCP; Walker, William D - DATCP; Pielsticker, Kathy F - DATCP; Jelinski, Dave - DATCP  
**Subject:** Working Lands Initiative -- Legislative Drafts

Hi Jana and Andrew --

Bill Walker asked me to send you the attached DATCP comments on the latest LRB drafts of the Farmland Preservation and PACE legislative drafts. If you have any questions, feel free to contact me or Bill.

Jim Matson, DATCP Counsel  
224-5022

12-29-08

## **PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS**

### **DATCP Comments on Draft Legislation (LRB 0202/P1)**

✓ **Page 4, after line 13, insert the following:**

(dm) "Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

✓ **Page 4, lines 14-18, modify as follows:**

(e) "Nonprofit conservation organization" means a nonstock corporation, charitable trust, or other entity whose purposes include the acquisition of property for conservation or agricultural preservation purposes, and that is described in section 501(c)(3) of the Internal Revenue code and, that is exempt from federal income tax under section 501(a) of the Internal Revenue Code, and that is a qualified conservation entity under section 170(c) of the Internal Revenue Code.

✓ **Page 6, lines 12-15, substitute the following:**

(e) An indication that the cooperating entity is willing to arrange the purchase of the proposed conservation easement according to this section and share in the purchase cost, subject to reimbursement under sub. (9) of the department's agreed-upon share of the costs.

This paragraph does not prevent a cooperating entity from using, for its share of the purchase costs, land donations or funds obtained from other sources.

✓ **Page 6, lines 18-19, modify as follows:**

(g) Information needed to evaluate ~~compliance with the application according to the~~ criteria in sub. (4) and in the department's solicitation under sub. (2)(b).

**Page 7, lines 4-6, modify as follows:**

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(c) The extent to which the proposed agricultural conservation easement would conserve important or unique agricultural resources, such as soil ~~that the federal department of agriculture has classified in soil capability classes I to IV~~ prime, state-wide important, or unique soil resources.

✓ **Page 7, lines 14-16 – Delete par. (g).**

*Per Jim Matsen - The idea is to allow reimbursement of 50% of fair market value when landowner agrees to sell for less than fair market value.*

✓ Page 8, lines 6-15, modify as follows:

(5) ~~APPROVAL~~ PRELIMINARY APPROVAL OF APPLICATIONS. The department may approve give preliminary approval to an application under sub. (3) after evaluating the application under sub. (4) and consulting with the council under sub. (13). The department shall ~~provide its approval of an application~~ give its preliminary approval in writing. ~~In an approval, the department shall specify the name of the cooperating entity, the amount of purchase costs approved for payment by the department, the location and acreage of the land that would be subject to the proposed agricultural conservation easement, the rationale for approving the application, and any conditions that apply to the approval. The approval of an application~~ Approval is contingent on the signing of a contract under sub. (6m) ~~and on other conditions specified in the approval.~~

✓ Page 8, lines 16-18, modify as follows:

(6) INFORMATION RELATED TO ~~APPROVED APPLICATION~~ PROPOSED EASEMENT. A cooperating entity that receives ~~an a~~ a preliminary approval under sub. (5) shall submit all of the following to the department:

✓ Page 9, lines 1-3, modify as follows:

(d) ~~An itemized statement~~ estimate of the transaction costs that the cooperating entity will incur in connection with the purchase of the proposed agricultural conservation easement.

Page 9, lines 12-20, modify as follows:

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(6m) CONTRACT WITH COOPERATING ENTITY. After a cooperating entity complies with sub. (6) and the department determines that the proposed instrument of conveyance complies with sub. (7), the department and the cooperating entity may enter into a written contract that specifies the terms and conditions of the department's participation in the purchase of the proposed agricultural conservation easement ~~and that provides that the~~. The cooperating entity will shall agree to pay the full purchase cost and the transaction costs related to the purchase of the proposed agricultural conservation easement, subject to reimbursement under sub. (9) of the department's agreed share of the costs. This does not prevent the cooperating entity from using, for that portion of the purchase cost that is not reimbursed by the department, land donations or funds obtained from other sources.

✓ Page 10, lines 1-2, modify as follows:

(a) Prohibits the land subject to the agricultural conservation easement from being developed for a use that ~~is not an~~ would make the land unavailable or unsuitable for agricultural use.

✓ **Page 10, lines 6-8, modify as follows:**

(d) Prohibits any holder of the agricultural conservation easement other than department from transferring or relinquishing the holder's interest without ~~permission from~~ 60 days prior notice to the department. The transfer or relinquishment of another holder's interest does not affect the department's interest in the agricultural conservation easement.

✓ **Page 10, after line 8, insert the following:**

*per Bob N. - we don't  
use that phrase*

(dm) Provides that a court of competent jurisdiction may do all of the following if, at any time, the court finds that due to unforeseen circumstances it is no longer possible for the easement to achieve its original purpose:

1. Terminate the easement.
2. Order the property owner to pay compensation to the easement holders, including the state of Wisconsin, under such terms as the court deems appropriate.

✓ **Page 10, lines 11-17, modify as follows:**

(8) RECORDING ACCEPTANCE AND RECORDING OF EASEMENT. A cooperating entity that purchases an agricultural conservation easement under sub. (7) shall submit the agricultural conservation easement for acceptance by the department. Upon acceptance by the department, the cooperating entity shall promptly record the agricultural conservation easement with the register of deeds of the county in which the land subject to the agricultural conservation easement is located and shall provide to the department a copy of the recorded instrument conveying the agricultural conservation easement, certified by the register of deeds under s. 59.43(1)(i).

✓ **Page 11, beginning at line 5, delete subsection (10).**

✓ **Page 12, after line 10, insert the following:**

**SECTION 2.** 165.25(4)(ar) of the statutes is amended to read:

165.25(4)(ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 93.73, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50, 100.51, 100.55, and chs. 126, 136, 344, 704, 707 and 779, together with any other services as are necessarily connected to the legal services.